IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.12.2018

ORDERS RESERVED ON 30.11.2018
ORDERS DELIVERED ON 05.12.2018

C O R A M
THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.29166 of 2017

M.V.Ramakrishnan ...Petitioner

vs

1.The Provident Fund Commissioner,
Annexe Building (SAO),
EPF Organisation Sector 28,
Commercial Complex,
Sanjay Kale Sabha Gruha, Akurdi,
Pune 411 035.

2.The Provident Fund Commissioner,
No.37, Royapettah High Road,
Azad Nagar, Royapettah,
Chennai 600 014. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of mandamus to direct the respondents to pay the petitioner Rs.4,35,551/- in respect of P.F. amount towards principal amount and interest amount due to the petitioner from April 2011 to till date at the rate of 9.5% p.a. within a specified time.

For petitioner : Mr.A.K.Sridharan

For Respondents : Mr.V.Sundareswaran CGSC

O R D E R

The petitioner seeks for a mandamus directing the respondents to pay a sum of Rs.4,35,551/- towards the principal provident fund amount and interest from April 2011 to till date at the rate of 9.5% p.a.

2. The case of the petitioner is as follows:

He was working in a Company named "Thermax Limited" from 1992 to 2006. He is having P.F. A/c. No. MH/15209/04743. For his working period from May 1992 to September 2006, he is entitled to get provident fund of Rs.4,35,551/- till March 2011 and interest payable on the said sum till today. However, the interest has been accounted only upto March 2011 by the first respondent. The petitioner was informed that he is not entitled to claim any interest amount after March, 2011, since he left the service prior to April 2011. The petitioner made a representation to the second respondent on 07.09.2017 for payment of interest. As it is not considered, the present writ petition is filed.

3. A Counter affidavit is filed by the respondents, wherein it is stated as follows:

The petitioner has contributed under the scheme for the period from May 1992 to July 2006. His account were updated from time to time by crediting interest as provided under Para 60 of Employees' Provident Funds Scheme 1952, upto the year 2010-11. In the year 2011, the Government of India amended paragraphs 60 and 72 of the Scheme. As per the amended provisions of paragraph 6 of paragraph 72, with effect from 01.04.2011, any member, who has either ceased to be employed or died but no application for withdrawal under paragraph 69 or 70 or transfer, as the case may be, has been preferred within a period of 36 months from the date it becomes payable or if any amount is received back undelivered and it is not claimed within a period of 36 months from the date it becomes payable, the same shall be transferred to an account to be called inoperative account. As per the amended provisions of sub paragraph 6 of paragraph 60, interest shall not be credited to the account of a member from the date on which it becomes inoperative. It is an admitted fact that the petitioner had worked from 1992 to 2006. Thus, no contribution was received in the petitioner's account after the year 2006. Accordingly, as per amended provision effectively from 01.04.2011, his account became inoperative account. Thus, he is not entitled for interest after the account became inoperative. The Government of India again amended sub paragraph 6 of paragraph 72 with effect from 11.11.2016 and as per the amended provision effective from 11.11.2016, the petitioner is entitled for interest and the same has, accordingly, been credited in his account. Therefore, the petitioner is not entitled for the period from 2011-12 to 2016-17. The total amount standing in the credit of the petitioner's account under the Provident Fund Account as on 31.03.2018 is Rs.4,72,790/- and the same is payable without interest for the period 2011-12 to 2016-17.

4. Learned counsel appearing for the petitioner submitted that as the petitioner has not retired after attaining the age of 55 years and as there was no occasion for the petitioner to make withdrawal, the respondents are not entitled to deny the interest to the petitioner for the period 2011-12 to 2016-17.

5. On the other hand, the learned Central Government Standing Counsel appearing for the respondents by placing his reliance on the amended paragraph 72(6) of the Employees' Provident Funds Scheme, 1952, with effect from 01.04.2011, submitted that the petitioner, having ceased to be employed after July 2006, is not entitled for interest from 2011-12 till the said sub paragraph 6 of paragraph 72 came to be amended subsequently with effect from 11.11.2016. Therefore, the learned counsel submitted that the petitioner is not entitled for interest for the period from 2011-12 till 2016-17.

6. Heard both sides.

7. The dispute between the parties is not in respect of the quantum of the principal amount payable towards provident fund payable to the petitioner. On the other hand, the dispute is with regard to the payment of interest, that too, for a particular period viz., 2011-12 to 2016-17. It is seen that paragraph 60(6) of the Employees' Provident Funds Scheme, 1952, contemplates that the interest shall not be credited to the account of the member from the date on which it has become inoperative account under the provisions of sub paragraph 6 of paragraph 72. It is further seen that sub paragraph 6 of paragraph 72 had undergone amendment twice earlier, one with effect from 01.04.2011 and another with effect from 11.11.2016. It is seen that as per the amendment made to sub paragraph 6 of paragraph 72, which was in force from 01.04.2011 till 10.11.2016, if a member has ceased to be an employee and that no claim or application for withdrawal or transfer of provident fund account has been preferred within a period of 36 months from the date it becomes payable, his account becomes an inoperative account. Paragraph 72(6) with effect from 01.04.2011, as extracted in the counter affidavit, reads as follows:

> "PARA 72(6): Any amount becoming due to a member as a result of:
>
> (i) supplementary contribution from the employer in respect of leave wages/arrears of pay, installment of arrear contribution received in respect of a member whose claim has been settled on account but which could not be remitted for want of latest address, or:
>
> (ii) accumulation in respect of any member who has either ceased to be employed or died, but no application for withdrawal under paragraph 69 or 70 or transfer, as the case may be has been preferred] within a period of [thirty six months] from the date it becomes payable, or if any amount remitted to a person, is received back undelivered, and it is not claimed within a period of [thirty six months] from

the date it becomes payable, shall be transferred to an account to be called the [Inoperative Account]:

Provided, that in the case of a claim for the payment of the said balance, the amount shall be paid by debiting the [Inoperative Account]."

8. Admittedly, the petitioner ceased to be in employment from July 2006. Therefore, as per the above amended provision of sub paragraph 6 of paragraph 72, his account became an inoperative account, as admittedly he has not made any application for withdrawal within a period of 36 months from the date such amount became payable. When such being the statutory provision, I do not think that the petitioner is entitled to seek interest for the period, to which such payment of interest was specifically barred in view of the amendment made to sub paragraph 6 of paragraph 72 with effect from 01.04.2011, as stated supra.

9. There is no dispute to the fact that the petitioner is entitled to get interest with effect from 11.11.2016, as admitted in the counter affidavit, in view of the subsequent amendment taken place to paragraph 72(6) with effect from 11.11.2016. The petitioner has not chosen to challenge the amendment made to paragraph 72(6) with effect from 01.04.2011 as stated supra. Under such circumstances, this Court is of the view that the petitioner is not entitled for payment of interest for the period 2011-12 to 2016-17. However, the respondents are directed to make the payment of principal amount as well as interest for the undisputed period, if not already paid, to the petitioner within a period of four weeks from the date of receipt of a copy of this order. With the above observations, the writ petition is disposed of accordingly. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Provident Fund Commissioner,
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EPF Organisation Sector 28,
Commercial Complex,
Sanjay Kale Sabha Gruha, Akurdi,
Pune 411 035.

2.The Provident Fund Commissioner,
No.37, Royapettah High Road,
Azad Nagar, Royapettah,
Chennai 600 014.

+1cc to Mr.A.K.Sridharan, Advocate, S.R.No.83556
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.83380

W.P.NO.29166 OF 2017

rrs 06/12/2018